

**She's 'governor -- period' -
Shurtleff says case law, history clear
Salt Lake Tribune, The (UT)
August 19, 2003
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Estimated printed pages: 4**

Attorney General Mark Shurtleff says Utah will soon get its first "real," not "acting," woman governor if Gov. Mike Leavitt wins Senate confirmation to head the federal Environmental Protection Agency.

"When the office of governor becomes vacant,

the lieutenant governor becomes governor -- period," Shurtleff said at a news conference Monday. "Not acting governor, just governor."

The attorney general released a formal legal opinion supporting the ascendancy of Lt. Gov. Olene Walker to the state's top elected position. Shurtleff also concluded Walker will have the authority to appoint a lieutenant governor without Senate confirmation.

Walker said she was pleased with the opinion because, "The people of Utah deserve a real governor rather than an acting governor."

She acknowledged the distinction is mostly technical but said there are practical considerations.

"Being governor, politically you can do more things. With an acting governor, everybody will say, 'Well, maybe we shouldn't consider this policy because she's just acting and it may change in a short time.' With being governor there's a little more credibility to any policy that I might put forth."

But the issue still could be challenged before the Utah Supreme Court, the ultimate arbiter of the succession question.

No one has stepped forward to openly criticize or contest Walker's succession to governor, but plenty of Republican conservatives -- including a few legislators -- have questioned the constitutionality of such a move.

Top state Senate leaders apparently have decided to accept Shurtleff's opinion as the final word.

"Although there may be some controversy over the wording, Senate leadership supports the attorney general's decision and looks forward to working with Gov. Walker," Senate President Al Mansell said in a prepared statement.

But Senate Majority Whip John Valentine, R-Orem, said, "I've heard that some [lawmakers] are interested in looking at an independent counsel" to issue an opinion.

"The [state] constitution has two plausible readings," said Valentine, an attorney. "If you look at the plain language of it, it's hard to come to the conclusion that the framers intended the lieutenant governor to become governor."

But he said Shurtleff made a "compelling argument," using history and case law, to come down on the side of the lieutenant governor's automatic succession.

Utah's constitutional language was modeled on the U.S. Constitution in declaring that upon a vacancy of the presidency, the powers and duties of the office "shall devolve to the vice president."

By the time the Utah Constitution was ratified in 1896, four vice presidents had moved into the Oval Office because of vacancies in the top job, Shurtleff's opinion noted. In voter guides issued for a 1980

amendment to the Utah Constitution, proponents argued that the changes clarified the order of succession, making it similar to that of the federal document.

"People always understood the lieutenant governor is like the vice president. The lieutenant governor is a heartbeat away, literally, from the governorship," Shurtleff said.

He also cited an Arkansas Supreme Court ruling that Bill Clinton's lieutenant governor automatically became governor when Clinton became president. Five other states' courts came to an opposite conclusion -- that the lieutenant governor became acting governor under the devolving powers and duties clause. But Shurtleff said those rulings were of less relevance than the Arkansas case because many were old opinions, and in four of the five cases, states later amended their constitutions to clarify that the lieutenant governor filled a vacancy in the governor's office.

Only Nevada has stuck with the interpretation that makes the lieutenant governor "acting" governor in the case of resignation, death, disability or removal of the governor.

Shurtleff's opinion also concluded the ascension is important to the "efficient operation of government."

"It makes good public policy," he said. "It's extremely important and it has to be very clear that the chief executive officer of the state of Utah has all the authority to act in that position. The people of the state of Utah are entitled to that recognition and understanding."

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Caption:

Olene Walker says her status is not just semantics. "There's a little more credibility to any policy that I might put forth."

Francisco Kjolseth/The Salt Lake Tribune

Edition: Final

Section: Nation/World

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Index Terms: Governors; Working Women; UT; Laws-Regulations; Politics; Nation/World

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